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ABSTRACT

The mass media are at odds with the public on issues concerning privacy, i.e., issues concerning whether private information about a person should be printed in a newspaper or magazine. In a 1982 survey, one journalist/respondent said his or her newspaper "almost always" favored the public's right to know over a person's right to privacy. Unfortunately, for many journalists ethics consists mainly of objective or unbiased reporting. Questions about whether private information about an individual should be printed are too often reduced to legal technicalities. One ethical code that would be useful for journalists stems from Judeo-Christian teaching. Considering persons as ends in themselves, this code would ask the journalist how he or she could best show love for the subject in question or the community. Two sample cases show how this code might be applied. In the first, an editor reaches the decision not to print information about a community leader's past. He arrives at the following policy: private details of a person's life may be published when not doing so would cause damage to that person or to the public. In another case, an editor reaches a decision to print information that a local surgeon has tested HIV positive; his reasoning is that harm could come to both the surgeon and his patients if the information remains unpublished. (Contains 16 references.) (TB)

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A Deontological View of the Privacy Debate

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Running Head: PRIVACY DEBATE

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A Deontological View of the Privacy Debate

In 1890, two men wrote an article on a concept that continues to be debated to this day. The men were Samuel Warren and Louis Brandeis, and the article gave rise to a concept they called the right of privacy (Lipschultz, 1990, p. 123). The article was published in the Harvard Law Review, and the issue has a legal side. However, a main argument concerning privacy seems to stem from differing views held by the press and the public about what morally ought and ought not to be published. In this debate, the issue is largely ethical.

The media stand largely on one side of the debate. Lynch (1983) writes, "Newspaper people -- by training, instinct and inclination -- tilt toward printing everything we can find out" (p. 6). The desire to publish or broadcast exists in other media as well. Indeed, a reporter's job is to poke into other people's business, and that poking gives a journalist the power to cause great harm (Stephens, 1993, p. 431). Further, it is this poking that at times is seen as the problem. Indeed, television news has received heavy criticism in the area of invasion of privacy, with many viewers angered when the focus is put on a grieving person (Wilson, 1989, p. 352).

On the other side of the issue stands the public, and surveys in the United States and Canada find a high degree of concern for individual privacy (Lipschultz, 1990, p. 130). In agreement with that sentiment, Bayles (1989) contends that people ought to have privacy, which he describes as control of information about themselves (p. 7). Further, Thomas Emerson (cited in Christians,

Rotzoll, & Fackler, 1991) writes:

> The concept of a right to privacy attempts to draw a line between the individual and the collective, between self and society. It seeks to assure the individual a zone in which to be an individual, not a member of the community. In that zone he can think his own thoughts, have his own secrets, live his own life, reveal only what he wants to the outside world. The right of privacy, in short, establishes an area excluded from the collective life, not governed by the rules of collective living. (p. 139)

These sentiments seem to acknowledge a sense of ownership one has of one's own thoughts and private actions. Emerson also conveys a sense of sanctuary -- a place where a person can keep such thoughts and actions away from the glare of the consideration of others. Yet, reporters often probe these sanctuaries, and the public often feels invaded.

From a historical perspective, moral conduct was not stressed as a leading virtue for a long time after reporting became a distinct craft during the Penny Press era (Mills, 1982, p. 1). In this century, Clifford Christians notes an increased interest in ethics in the 1920s, followed by four decades of relative indifference and a revival of interest starting in the 1970s (cited in Mills, 1982, pp. 1-2). "But the dominant ethical concern has remained the avoidance of bias" (Mills, 1982, p. 2). In fact, Mills (1982) discusses a University of Illinois survey that found few of its 153 respondents were aware of any ethical dilemmas outside the professional code of objective coverage (p. 22).

Also in that survey, one respondent said his or her newspaper "almost always" favored the public's right to know over a person's right to privacy (Mills, 1982, p. 22). This tendency stands in contrast to a view held by many readers, who apparently don't believe there is such a thing as the public's right to know (Lynch, 1983, p. 10). However, another journalist in the Illinois survey said, "We often find ourselves defending the First Amendment to the exclusion of all other rights, though many rights do, in fact, conflict" (Mills, 1982, p. 18).

This journalistic attitude concerning the paramount goals of avoiding bias and serving the public's right to information may be a reason why some support is given for secretly taped interviews. However, not everyone supports the invasive method. Cooper (1987) acknowledges that scholars can offer justifications in practical and moral terms for secretly taping interviews, but he questions the nature of the taping itself (p. 11). "Secret taping implies that ends (more accurate news) justify means (covert taping) . . . Finally, from a purely ethical standpoint, can dishonest methods ever be employed in the interest of greater honesty?" asks Cooper (1987, p. 11).

The difference of opinion concerning the right to know is not the only area in which the press is not in step with its audience. L. Erwin Atwood says academic research repeatedly shows that people in the media may not be good at figuring out what the public wants, knows or believes (cited in Lipschultz, 1990, p. 133). That could help explain why the public overwhelmingly opposed the stakeout of Gary Hart conducted by the Miami Herald in

May 1987 (Whetmore, 1989, pp. 307-308). What the Miami Herald saw as an acceptable method to get a justifiable story was seen as an invasion of privacy by the public.

However, there is evidence that journalists are beginning to consider individual privacy more. Two similar surveys -- conducted in 1976 and 1983 by the Associated Press Managing Editors Professional Standards Committee -- found more editors wouldn't publish crime victims' addresses in 1983 (LaRocque, 1983, p. 11). This finding was released about the same time the President's Task Force on Victims of Crime reported that crime victims are often afraid of repercussions if their names are published, and that this fear could be eased if the names were not made public (LaRocque, 1983, p. 11). On the same general topic of reporting victims' names, Clay (1983) contends, "The `freedom' to publish names of adult [rape] victims demands serious contemplation about the results -- both societal and individual -- of such publication" (p. 7).

There is much sentiment that more should go into the decision to publish than proclaiming the right to know. Christians et al. (1991) point out that sensitive journalists must consider more than the technically legal, and that ethical behavior should rule out innuendo and recklessness, even though the law does not (p. 139). Further, Klaidman and Beauchamp (1987) point out that even though the law is concerned with moral issues, it is not the main repository of a society's moral standards and values (p. 12). Ethical behavior means people's dignity should not be maligned in the name of media privilege (Christians et al., 1991, p. 140).

Further, Biagi (1988) says professions that accept ethics as a standard help ensure their own future (p. 359).

Though journalists' perspectives at times are at odds with the public, professionals in the media do want to serve their audiences. A survey by Izard and Hesterman (1985) found that most journalists want "to avoid violating legal or ethical privacy codes or generally accepted standards of behavior" (p. 13).

However, journalists often espouse a value system that differs from the public they seek to serve. In the Illinois survey, respondents made utilitarian statements in which the rights of the many were valued more than the rights of the individual (Mills, 1982). Further, Mencher (1991) contends that journalists should select information for use based on a test of utility, among other things (p. 611). Only one respondent in the Illinois survey cited a formal ethical system outside of journalism, and that system was Christianity (Mills, 1982, p. 19). That number stands in stark contrast to the findings of a 1992 poll that found 65 percent to 80 percent of adults, depending on age group, believe the Bible is wholly God's word (Ostling, 1993, p. 47). Therefore, the public's ethical system seems to be largely deontological, while the media often espouse a utilitarian viewpoint. The public decides based on duty, and the media often decide based on the anticipated end result of their action. The systems are at odds. Further, it is difficult to see how the two sides could reach general agreement on the privacy issue when the utilitarian view allows individuals to be used as means toward some end result, and the deontological view sees people as ends in

themselves.

Yet, the media and public need not be at odds. Journalists could adopt a view in which persons were seen as ends in themselves. As cited earlier, Izard and Hesterman (1985) point out that journalists don't want to be outside the mainstream when it comes to "generally accepted standards of behavior" (p. 13). In addition, many journalists probably would agree that individuals have value and should be treated with dignity and respect. Therefore, it stands to reason that many journalists might adopt an ethical code that considers persons as ends in themselves -- if such a code could be shown to work in the rush of daily decision-making that faces the working press.

In an effort to show how such a deontological system could be used by the media, this paper will consider two hypothetical cases that focus on the issue of privacy. Decisions on whether to publish will be reached using the Judeo-Christian principle of persons as ends. The first case considers whether to publish information about a minister's use of drugs 20 years ago. The second case considers whether to publish that a surgeon has the virus that causes AIDS.

Case of Minister Who Used Drugs as Youth

The Rev. Mary Smith is a strong proponent of a plan she developed to help recovering drug addicts by building halfway houses in middle-class neighborhoods. The neighborhoods have a relatively high number of children. Many people favor building such facilities in areas away from children. However, the Rev. Smith is seen as a dominant force for good in the community, and

nobody is willing to oppose her. Smith argues the recovering addicts, who receive drugs through a program, need to be surrounded by a pleasant environment to help them recover.

John Doe is publisher of The Sentinel, a community newspaper that also has been silent on the issue, even though many staff members have misgivings about the plan. Doe receives an inconspicuous visit from a concerned and reputable citizen. The citizen voices his worries about the halfway houses. He then gives Doe a packet of information. It holds the court record of Mary Smith. According to the document, Smith was convicted of using and selling all manner of narcotics 20 years ago in another state. The citizen is timid by nature. He says he is too afraid of what would happen to him if he released the information. He asks Doe, as a powerful member of the community, to publish the information. He then leaves. Doe has the information in the packet confirmed. It is true.

Before reaching any decision on publishing the information, Doe talks with Smith. She admits it is true. She pleads with Doe not to publish the material. The recovering drug addicts need the halfway houses, she says, adding that she survived her past only because of a similar program. After she leaves, Doe decides to list the reasons for and against publishing the material he has been given.

His alternatives seem simple enough. He could refrain from publishing the truthful report of a person's distant past. That would safeguard the person's desire for privacy. On the other hand, he could publish the report as something relevant to the

halfway house issue and the character of the person who controls the public debate on that issue.

If Doe publishes the material, the cap on public debate of the halfway houses likely would be removed. The issue could be decided in an atmosphere of open debate. As for the Rev. Smith, she would have her authority as a moral leader severely diminished -- at the very least. It is possible that she might not be allowed to remain a pastor in the community. If Doe decides not to publish the material, Smith's privacy would be safe. However, justifiable concerns of the citizenry might not be voiced. That might lead to the construction of halfway houses in an atmosphere of apprehension and anxiety that is good for no one.

There also are values involved in this decision. The paper would stand to gain in the area of nonmoral values. One such value is a possible boost in newsstand sales. Another nonmoral value is The Sentinel being seen as professionally competent in reporting on a key issue. Another nonmoral value at issue is having an informed public capable of making informed decisions. The moral value of being honest also is involved in this situation. The moral values of being fair and kind to one another also are involved.

The Sentinel has a duty to serve its readers and the community. The paper has a duty to encourage the free and open debate of issues that confront the public. The publisher also has a duty as a professional to publish factual information -- when it is relevant. In addition to these duties and the loyalty the paper has to its readers, The Sentinel also has a duty not to trample on

the rights of others. In this case, the Rev. Smith's right to privacy is at issue. The publisher also must maintain a sense of personal integrity.

Doe will reach a decision on the basis of the Judeo-Christian principle of persons as ends, or "love your neighbor as yourself." A central question in this case seems to be whether it is to Smith's moral benefit to have her past generally known. If Smith had remained in the drug culture, one could argue that it was to Smith's benefit that her past be known. That would force her to deal with her involvement in the drug culture in the hope she could escape it. Such an action would show love for her. However, she has escaped that past. She now is an active advocate for what she perceives as the public good. Doe also considers his love for the community. Would it be showing them love by hurting a good person in the community in order to bolster their courage to speak out on an issue? Doe decides it would not. However, Doe feels that if he withheld from them information that directly hurt them, that would be another case. In this situation, the level of injury that might be caused by the halfway houses is unknown. In fact, it is not known if any injury would be suffered. The only obvious injury linked to this case would be caused by "informing" the readers of the Rev. Smith's now irrelevant past. Doe decides he does not want to promote that type of informed public.

From this consideration, Doe arrives at the following policy for The Sentinel in the area of privacy: Private details of a person's life may be published when not doing so would cause damage to the person and the public good.

From this policy, Doe reaches his decision. Doe will not publish the 20-year-old record of the Rev. Mary Smith. That would damage her life. In addition, not publishing the record cannot be shown to damage the public good. In accordance with this decision, Doe decides to work to encourage a public debate on the halfway house issue. Doe believes this action -- not the revelation of a past that has been defeated -- will best serve the public and private good of all involved.

Case of Surgeon With Virus

Dr. John Smith is a wealthy and prominent surgeon at County Hospital. He was named recently to the ethics committee of the local chapter of the American Medical Association. The chapter has asked the committee to develop a policy governing whether patients should be informed if physicians test positive for HIV -- the virus that causes AIDS. Smith has swayed the panel to the position that a patient should not be informed unless a doctor thinks he or she might jeopardize that patient's health. This is contrary to the position of a minority of members on the panel. The minority-backed policy would require patients to be told of a doctor's health if the physician performs invasive procedures as part of his or her medical practice. The minority-backed policy states that surgeons would be required to report their health status to patients. The panel is to give the local chapter its recommendation next week.

John Doe is publisher of The Sentinel. It is a newspaper in the community. One of his neighbors is the local AMA chapter's president. She favors the policy backed by the minority of panel

members. She visits Doe at his home one evening and gives him a document. Dr. John Smith has the virus that causes AIDS, according to the report from the state Health Department. The results of HIV tests are released routinely to AMA chapters by the Health Department in this state. No law forbids the publication of the test results. After the neighbor leaves, Doe decides to call on Smith at his home. Smith admits he took a test last month that shows he has the virus. However, Smith contends he rarely cuts a finger during surgery. Smith believes the community would suffer a greater loss if he quit performing surgeries. He fears he would be forced to quit being a surgeon if the test results were revealed in a newspaper story. He urges Doe not to publish the test results. He says his health is his private affair.

Doe leaves Smith's residence and decides to list the reasons for and against publishing the information Doe has confirmed. The moral dilemma concerns the privacy of Smith vs. the welfare of his patients and people who may have intimate contact with those patients. The welfare of current and future patients is involved. The well-being of former patients who have been infected also is involved. The welfare of past patients who have been infected cannot be altered radically, but they could change their behavior toward others once they learn of their condition.

Doe has two basic alternatives. He can publish or not publish that Smith has the virus that causes AIDS. If Doe refrains from publishing the material, he would be upholding Smith's desire for privacy. Smith would be able to continue to perform surgeries. This would mean that many people would receive good care. However,

a few might receive the seeds of a lethal disease. If Doe publishes the report, Smith's desire for privacy would be ignored. Smith probably would have to quit performing surgeries. The people Smith would have served probably would be able to find other doctors. The most important aspect of this alternative is that Smith would not be able to pass on the deadly virus to any additional patients. Further, any patients he has infected would be able to seek treatment and alter their lifestyles.

Doe must consider what values are at issue in this situation. The newspaper probably would gain in the area of newsstand sales. Doe classifies that as a nonmoral value. Another nonmoral value involved is that the newspaper might appear competent by reporting on an issue of keen public interest. Another nonmoral value involved is the health of the general community. The moral values of fairness and honesty also are involved.

Doe considers to whom duty and loyalty are owed. The Sentinel has a duty to serve its readers and community with timely and needed information. This duty involves people whose lives may be touched somehow by Smith. In addition to being loyal to the people it serves, The Sentinel has a duty to act in a way that enhances its reputation. In that vein, Doe also has a duty to himself to follow his conscience and uphold his integrity. The Sentinel also has a duty to weigh a person's right to privacy and not trample on that right.

Doe reaches his decision in this case on the basis of the Judeo-Christian principle of persons as ends, or "love your neighbor as yourself." A central issue in this case is whether Dr.

Smith would benefit morally by having his health status revealed. If performing his job did not put his patients at some level of risk, it could be argued that Smith would not benefit morally by publishing the report. In that instance, The Sentinel should not publish the material. Publication of the information would not show love for Smith or his patients. However, Smith acknowledges that some patients could be affected adversely, but he continues to operate. Smith is a physician and is dedicated to helping all patients. However, the doctor seems to be putting his interests above those of at least some of his patients. It is wrong for Smith to do this. It is likely he would benefit morally by having his health status revealed. The revelation would force him to act in the health interests of all his patients. The publication of the report on Smith's health would be showing love for him and for those he has served or would serve. Indeed, it is important to remember the duty we have to the community. The Sentinel also should act in a way that shows love for the people in it.

From this consideration, Doe arrives at the following policy for The Sentinel in the area of privacy: The Sentinel may publish private details of a person's life when doing so is for the individual's and public's good. In this case, The Sentinel will publish the report on Smith because to do so shows love for him. It also shows love for the people of the greater community, who could be affected by Smith continuing to operate.

An additional issue that may arise from this decision is that Smith's former patients may become concerned. To answer this issue, The Sentinel will publish the date of Smith's test. The

paper will ask that he disclose when he believes he contracted the virus. In addition, the newspaper will report where people can go for more information on the virus or tests. Doe believes most people would prefer to know if they had the virus. This would allow them to change their behavior to avoid passing the virus to others. Doe believes the paper's decision shows love for everyone involved.

The newspaper's policy and decision in this case seem to support the position of one group of members on the AMA chapter's ethics panel. However, that factor does not play a role in Doe's moral decision. Doe must act out of love for the people involved. Doe must not create a story just because it supports his point of view on a particular social issue.

Conclusion

In the first case, the publisher decided not to print the story. It could not be shown that the minister would benefit if information about her past use of drugs was printed. A possible concern with using a persons-as-ends ethical code is that a media outlet may find it nearly impossible to publish negative information about individuals. Indeed, it could be argued that any media outlet that prohibited the dissemination of information in such a way would be disserving its audience.

However, the Judeo-Christian persons as ends principle does not stop all derogatory information from being published. That is apparent in the second case, in which the information about the surgeon's health is published. What the Judeo-Christian principle does is require the journalist to consider the individual when

deciding on whether to publish a story. That seems to be what the public wants -- the importance of the individual to be acknowledged.

The principle does not prohibit reporting information of wrongful actions by individuals in general. That is shown by the case study in which it was decided to print information about the surgeon's health. However, the persons-as-ends principle does require the journalist to consider the individual when deciding if it is permissible to publish a story. In the two case studies, the publisher had to be able to show that the story would be printed either for the good of the individual and public, or to keep the individual and public from being harmed.

Difficult decisions can be made. If an individual is doing something that is ethically wrong, such as lying or being hypocritical, reporting that information would be permissible. The justification for printing the story could be that it was published with the intent of stopping the person from continuing to commit the wrongful act. It would be harmful morally for the person to continue to commit the act, and helping the person to stop acting in that way would be for the person's good.

In addition, the information would have to be relevant to the greater community in order for the story to be justified. The public should be informed about things that are relevant to people's lives, and journalists have a duty to provide such information. This does not mean that all information must be of extreme importance to the community before it can be printed. However, it does mean that journalists should honor individuals'

desires to keep private certain details of their lives if reporting those details does not benefit the person and the community.

This process does have a cost, as shown in the case studies. It did require time and effort on the part of publisher Doe. However, it would be difficult to justify an argument that held that individuals are not worth time and effort. Indeed, journalists have a duty to serve the public, and the public is made up of individuals.

By using an ethical code that considers persons as ends in themselves, journalists would be using a code that is more in line with the views of a significant segment of the community. This could help journalists see the privacy issue from the perspective of a large part of the public. This does not mean that all journalists must convert to Christianity. This simply encourages journalists to consider people as being important, or ends, in themselves -- not just as elements, or means, used to obtain a story. If members of the media were to adopt this persons-as-ends approach, it could help alleviate some of the friction that exists between journalists and the people they seek to serve.

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Author's Notes

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